IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 157 OF 2006

IN

SUMMARY SUIT NO. 521 OF 2006

M/S. NOVA CHEMICALS ..PLAINTIFFS

V/S

M/S. SUNCHEM INDUSTRIES ..DEFENDANTS

D.B. PATIL FOR PLAINTIFFS.

S.A. BHAGWAT I/B NEGI & ASSOCIATES.

CORAM: D.K. DESHMUKH, J.

DATE : 21ST AUGUST,2006.

P.C.

1. Plaintiffs have filed the suit for recovery of price of goods. There is no dispute that the plaintiffs have supplied the goods as per the order placed by the defendants. There is also no dispute that the defendants received the goods. It is also admitted position that the defendant has made part payment of the amount. In fact, defendant paid substantial amount of the invoice, leaving a balance of Rs. 1,00,000/-. That amount was demanded by the plaintiff. Even a demand notice was sent but there is no reply. For the first time in the reply the

defendant raised the defence that one of the consignment sent by the plaintiff to the customer of the defendant in the month of August 2003 was found to be defective. According to the defendant, their customer to whom the goods have been supplied informed that the goods were defective. According to the defendant, this fact was immediately informed to the plaintiffs. There is no documentary evidence to show that the defendant at any point of time pointed out to the plaintiff that any goods supplied by the plaintiff to the defendant were defective. What is significant to note is that though the plaintiff was demanding payment by writing letters and was sending demand notice defendants at no point of time pointed out in writing that one of the consignment sent by plaintiff is defective. Therefore, defendant could not substantiate the defence put up by him that part of the goods supplied by plaintiff is defective. It was then argued that the suit has been instituted in the name of M/s. Sunchem Industries which is a proprietory concern of Mr. Vijaynath U. Shukla. Because the proprietor of the concern is not sued according to the defendant suit is not maintainable. According to the plaintiff M/s. Sunchem Industries is a proprietory concern of Mr. Vijaynath Shukla. It is

clear that Shri Shukla has been

joined as a defendant in his trade name. Both the defence raised by the defendant have no substance and they show that the defendant is desperate. The defendant is not entitled to leave. Therefore, plaintiff is entitled to a decree under Order XXXVII of the Code of Civil Procedure. Summons for Judgment is disposed of. Suit of the plaintiff is decreed in terms of prayer clause (a) and (b). Court fees be refunded as per rules.

At this stage learned counsel for the defendants requests for stay of the operation of the order for a period of 4 weeks. The decree passed is a money decree and hence there is no question of staying its execution.

(D.K. DESHMUKH, J.)